



6714-01-P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

RIN 3064-ZA11

Proposed Rescission of Policy Statements

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Request for comments.

SUMMARY: In an ongoing effort to streamline issuances by the FDIC to the public and to ensure that such issuances are timely, relevant, and effective, the FDIC initiated a comprehensive review of its Statements of Policy to identify those that could be rescinded. Additionally, the FDIC, in the 2017 report required by the Economic Growth and Regulatory Paperwork Reduction Act, committed to reviewing published guidance to identify any guidance that should be revised or rescinded because it is out-of-date or otherwise no longer relevant. **DATES:**

Comments must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: You may submit comments, identified by RIN 3064-ZA11, by any of the following methods:

- *Agency Website:* <https://www.fdic.gov/regulations/laws/federal/>. Follow the instructions for submitting comments on the Agency website.
- *Email:* Comments@fdic.gov. Include RIN 3064- ZA11in the subject line of the message.

- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

Include RIN 3064-ZA11 in the subject line of the letter.

- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

Public Inspection: All comments received for this request for information must include the agency name and RIN 3064-ZA11. All comments received will be posted without change to <https://www.fdic.gov/regulations/laws/federal/> – including any personal information provided – for public inspection.

FOR FURTHER INFORMATION CONTACT:

Applicability of the Glass-Steagall Act to the Securities Activities of Insured Nonmember Banks:

William R. Baxter, Senior Policy Analyst, (202) 898-8514, wbaxter@fdic.gov;

Michael B. Phillips, Counsel, (202) 898-3851 mphillips@fdic.gov.

Treatment of Collateralized Letters of Credit After Appointment of the FDIC as Conservator or Receiver and Treatment of Collateralized Put Obligations After Appointment of the FDIC as Conservator or Receiver:

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Contracting With Firms That Have Unresolved Audit Issues With FDIC:

Thomas D. Harris, Deputy Director, (703) 562-2203, tharris@fdic.gov; Robert J. Brown, Supervisory Counsel, (703) 562-6068, robertjbrown@fdic.gov.

SUPPLEMENTARY INFORMATION: After a comprehensive review of FDIC Statements of Policy, given legislative and other changes since their publication in the *Federal Register*, the FDIC proposes to rescind the following four Statements of Policy because they are outdated and no longer necessary:

Applicability of the Glass-Steagall Act to Securities Activities of Subsidiaries of Insured Nonmember Banks;

Treatment of Collateralized Letters of Credit After Appointment of the FDIC as Conservator or Receiver;

Treatment of Collateralized Put Obligations After Appointment of the FDIC as Conservator or Receiver; and

Contracting with Firms that have Unresolved Audit Issues with the FDIC.

Although these Statements of Policy were not subject to public comment prior to their adoption, the FDIC Board has, on a discretionary basis, elected to provide a period for public comment on the proposed rescission of these Policy Statements.

PROPOSED RESCISSIONS OF STATEMENTS OF POLICY

(a) Statement of Policy on Applicability of the Glass-Steagall Act to Securities Activities of Subsidiaries of Insured Nonmember Banks

This 1982 Statement of Policy addresses the applicability of sections 20 and 32 of the Banking Act of 1933 (Glass Steagall Act) to the securities activities of subsidiaries of insured nonmember banks.¹ The Statement of Policy states the opinion of the FDIC Board that the Glass Steagall Act does not prohibit an insured nonmember bank from establishing an affiliate relationship with, or organizing or acquiring, a subsidiary corporation that engages in the business of issuing, underwriting, selling, or distributing stocks, bonds, or other securities. The 1982 Statement of Policy was superseded in its entirety by the enactment of the Gramm-Leach-Bliley Act (GLBA).² GLBA allowed commercial banks, investment banks, securities firms, and insurance companies to consolidate and operate as financial conglomerates. Therefore, the information and guidance contained in the 1982 Statement of Policy is out-of-date. For this reason, the FDIC is proposing rescission of the 1982 Statement of Policy.

(b) Statement of Policy on Treatment of Collateralized Letters of Credit
After Appointment of the FDIC as Conservator or Receiver

This Statement of Policy was adopted by the FDIC on May 19, 1995, in order to clarify how the FDIC as conservator or receiver of a failed insured depository institution (IDI) would treat certain capital markets financing transactions using collateralized letters of credit (CLOCs) issued by IDIs prior to August 9, 1989, the date on which the Financial Institutions Reform, Recovery, and Enforcement Act of 1989³ (FIRREA) was signed into law.⁴ The Statement of

¹ 47 FR 38984. (<https://www.govinfo.gov/content/pkg/FR-1982-09-03/pdf/FR-1982-09-03.pdf>).

² Pub. L. 106-102, 113 Stat. 1338, § 101 (1999).

³ Pub. L. No. 101-73, 103 Stat. 103 (1989).

Policy applies only to CLOCs (i) utilized in capital markets financing transactions originally issued by IDIs prior to August 9, 1989, and any subsequent renewal, replacement or extension of such CLOCs; and (ii) where the security interest in collateral pledged by the IDI was both perfected and legally enforceable under applicable law. The Statement of Policy does not apply to trade letters of credit or letters of credit issued for any other purpose.

The Statement of Policy provides that after its appointment as conservator or receiver of a failed IDI, the FDIC may either (i) continue any CLOCs as enforceable under the terms of the contract during the pendency of the conservatorship or receivership, or (ii) call, redeem or prepay any CLOC by its statutory power to repudiate or disaffirm contracts entered into by the IDI.

Based on market research, the FDIC has concluded, to the best of its knowledge, that it is unlikely that any public or privately issued transactions of the type covered by the Statement of Policy remain outstanding at this time. Therefore, the FDIC is seeking public comment on the continued need for the Statement of Policy and, if all such transactions have terminated, the rescission of this Statement of Policy.

(c) Statement of Policy on Treatment of Collateralized Put Obligations
After Appointment of the FDIC as Conservator or Receiver

This Statement of Policy was adopted by the FDIC on July 9, 1991, in order to explain how the FDIC as conservator or receiver of a failed IDI would treat certain capital markets financing transactions using collateralized put

⁴ 60 FR 27976. (<https://www.govinfo.gov/content/pkg/FR-1995-05-26/pdf/95-12992.pdf>).

obligations – also referred to as “collateralized put options” (CPOs)— issued by IDIs prior to August 9, 1989, the date on which FIRREA was signed into law.⁵ The Statement of Policy applies only to CPOs (i) issued by IDIs in connection with capital markets financing transactions, including the formation of publicly offered unit investment trusts and other sales of an IDI’s portfolio securities, prior to August 9, 1989, and any subsequent renewal, replacement or extension of such CPOs; and (ii) collateralized by property owned and pledged by the IDI, and in which the security interest granted is both perfected and legally enforceable.

The Statement of Policy explains that the FDIC as conservator or receiver has the right to call, redeem or prepay any CPOs by repudiation or disaffirmance of the applicable written contract entered into by the IDI, either directly by cash payment in exchange for release of collateral or by liquidation of the collateral by a trustee or other secured party.

Based on market research, the FDIC has concluded, to the best of its knowledge, that it is unlikely that any public or privately issued transactions of this type remain outstanding at this time. Therefore, the FDIC is seeking public comment on the continued need for the Statement of Policy and, if all such transactions have terminated, the rescission of this Statement of Policy.

(d) Statement of Policy On Contracting with Firms That Have Unresolved Audit Issues With FDIC

The *Statement of Policy on Contracting with Firms That Have Unresolved Audit Issues With FDIC* (1997 Statement of Policy) was not approved by the

⁵ 56 FR 36152. (<https://cdn.loc.gov/service/ll/fedreg/fr056/fr056147/fr056147.pdf>).

FDIC Board but it is being consolidated in this notice for convenience and completeness.

The 1997 Statement of Policy was adopted to address situations in which the FDIC seeks to contract with firms with which there are unresolved audit issues.⁶ The 1997 Statement of Policy established certain rights and procedures for the handling of contracting parties that have unresolved audit issues, as determined by various FDIC auditing agents. After review of the relevant Statement of Policy, the FDIC has concluded that the document may give rise to *de facto* exclusions from future FDIC contracting opportunities in a manner that is inconsistent with procedural protections specified in 12 CFR 367.

In determining whether to revise or rescind the relevant Statement of Policy, the FDIC considered a variety of factors, including whether or not the Policy provided the FDIC and its various audit agents with essential or additional protections regarding the repayment of challenged amounts. The FDIC has determined that existing remedies are sufficient to allow the FDIC and its agents to pursue such challenged amounts without the need for those measures specified in the Statement of Policy. Therefore, the FDIC proposes to rescind this Statement of Policy, and seeks comment on this action.

Authority: 12 USC 1811 *et seq.*

Federal Deposit Insurance Corporation.
By order of the Board of Directors.
Dated at Washington, DC, on September 17, 2019.

Robert E. Feldman,
Executive Secretary.

⁶ 62 FR 13382. (<https://www.govinfo.gov/content/pkg/FR-1997-03-20/pdf/97-6995.pdf>).

